

**To:** Judith.Harvey@usdoj.gov[Judith.Harvey@usdoj.gov]  
**From:** Christopher J. Neary  
**Sent:** Sun 7/6/2014 3:26:43 PM  
**Subject:** River Watch v. City of Willits and related issues re discharge of wastewater to the groundwater  
[2013-10-29-GHD-water-balance-report.pdf](#)  
[2013-07-05\\_GHD\\_questions.pdf](#)  
[2013\\_City\\_Irrigation\\_Data.pdf](#)  
[McEdwards Mass Balance Spreadsheet.pdf](#)  
[2014-06-23 E-Filed Ltr to Honorable Vince Chhabria.pdf](#)

Dear Ms. Harvey:

Thank you for your effort to undo the stipulation for dismissal device by which the City and River Watch sought to sweep under the rug a seemingly significant public health issue . Unfortunately, my client will not be able to renew our effort to intervene or even get a comment in front of the Court because; (1) we have been instructed to make our comments by letter entered in the ECF System; and (2) we have been locked out of the ECF system by order of the Judge. (Our letter to Judge Chhabria of June 23<sup>rd</sup> was assigned ECF # 49 for the case, (see attached letter with ECF stamp) but has been deleted from the docket.) Although this is irregular beyond belief and we could probably get our lock- out from the ECF System reversed by complaining to the Chief Judge, we are being pressed by the City not to comment. We are trying to settle a state case which both sides wish to settle, but the City has indicated that we will have to agree not to participate in any effort to bring the pond leakage to public notice in order for the settlement to go through. That settlement is not yet finalized, but for political reasons we may well be muzzled by a prospective and imminent agreement with the City.

It appears that for this public health issue to be looked at that the EPA would have to get involved.

In discovery in our lawsuit against the City we have stumbled across what might be a major, unpermitted discharge of partially treated wastewater to the groundwater aquifer in our City. By all appearances the City is willing to go to just about any length to avoid addressing this including paying River Watch \$60,000 to be quiet. The Regional Board staff which approved the permit for the City's new plant does not seem motivated to address the issue either because it made a mistake in putting conflicting language in its permit and was bamboozled by the City's representation that the 100 million gallon "Enhanced Wetlands" would have a clay liner, when in fact: (1) the City's representation was based upon its generalized description of the soil at the site as being clay; (2) a clay liner has an industry standard of being compacted in six inch lifts; (3) the plans and specifications for the plant construction did not provide for any compaction of the excavated Enhanced Wetlands; (4) our expert (who we consented to River Watch's use as well) says that there is some natural clay soils at the site but the predominant soil

type is Franciscan Loam which is very porous.

All of this leads to the possibility that the ponds called the “enhanced wetlands” were designed to discharge partially treated wastewater to groundwater to get rid of excess winter flows the City has because its collection system has abnormally high inflow and infiltration and the purpose of the plant construction project was to address the City’s inability to meet the discharge ratio of treated wastewater to the surface waters. By building a plant rather than addressing inflow and infiltration the City obtained a grant from the EPA (in a very small amount) and a USDA loan/grant while it would not likely to have obtained such grants for repairing its collection system which is more of a maintenance expense charged to the ratepayers. The lack of compaction of the excavated soils in a place where there is very high groundwater indicates that the City wished to dispose of the excess flows and discharge to the groundwater was a convenient way for the designers of the plant to avoid discharge to the surface waters. That the Regional Board fell for the representation that the ponds would be clay lined gave the Regional Board with a comfort level which did not require the City to monitor groundwater, and gave it a permit which while expressly prohibiting groundwater discharge, seemingly contradicts this prohibition by stating that slow seepage was anticipated in the design. The Regional Board appears to be hunkering down to avoid having egg on its face by accepting the City’s representation of a clay liner at face value.

My client Brooktrails has a contract with the City for the City to discharge the District’s wastewater. (My client has about 1450 domestic sewer connections and the City has about 2700 residential, commercial and industrial connections.) We pay operational costs in the ratio of total flow, and capital costs in the ratio of flow for the dry months of May-October. Our lawsuit with the City relates to the City’s systematic financial exploitation of the relationship which, for one of many examples, has the City charging 71% of the cost of the plant operations for administration of the plant operations, greatly overstating our financial liability under the contract. In connection with that lawsuit I had my expert do a mass balance study to test the validity of the intake meter which measures total flow. I thought that if there was a discrepancy of the discharge (surface flow discharge plus irrigation (land discharge) discharge) that suspected inaccuracy of the intake meter would reveal itself. Our purpose was to test the validity of the intake meter. (we later had a meter expert conduct extensive tests of the meter which found that the intake meter was operating with an estimated variance of about 20% rather than the EPA standard of a 10% variance, and that the variance underestimated flow. )

The mass balance study demonstrated that there were as much as 80-100 million gallons unaccounted for by the plant meter records. This is explained in the McEdwards deposition which I previously forwarded to you. We shared this conclusion with the City in the Summer of 2013 and offered to allow their attorneys and staff to meet with our expert, which offer the City declined. The City told us in November 2013 that it conducted its own study

through which its expert GHD concluded that there was just slow leakage of 9 mg annually which was within the limits of evapotranspiration. We turned this information over to River Watch and allowed River Watch to hire our consulting engineer with the hope that River Watch would get to the bottom of the discrepancy of the two mass balance studies. As we approached trial in our case in May 2014 we revisited the issue and obtained a copy of the GHD report which is attached. We were concerned that our data was in error and that our conclusion that there was at least 80-100 million gallons unaccounted for in error. We studied the City's irrigation records very carefully. (those records are attached). In doing so our expert discovered that the records were inconsistent in that the scale used for the June 2013 records was lower by a factor of 10 than the scale used for the July-December 2013 records. A memo explaining the inconsistency and its ramifications is attached which includes meter readings throughout the plant for 2013..

In our dealings with the City, as is the case in most lawsuits, we came to be distrustful. When we found the error in the reporting we jumped to the conclusion that the June records had been falsified on purpose to conceal the reality that the ponds are discharging massive amounts of partially treated wastewater. This conclusion was bolstered by the fact that the City first learned that a question was being raised as to its discharge to the groundwater when it received a 60 day letter from River Watch on May 10, 2013 (see ECF 1, ECF pp 24-26) It seemed convenient that the following month a reporting scale error was made having the impact that 79 million gallons disappeared and that GHD relied upon the City's data to reach its conclusion- which was then shared with the Regional Board which to this day operates upon the assumption that the GHD report effectively deals with the conclusions of our expert. Our conclusion that this was intentional was bolstered again when we did a public records request last week for the Regional Board file for the period of May 2013-June 20, 2014 and we do not find that the City has made any effort to correct the information provided to the Regional Board via the GHD report although the City had actual notice of its mistake in the June data as of March 29 2014 when it deposed our Expert McEdwards. It would seem if there had been a reporting error of such magnitude known by the City which error it knows the regulatory body had relied upon, that it would make an effort to correct it. We have examined the file and we find no written correction and no notes by a Regional Board employee of any oral correction. (we have the file in electronic format if you want it). However, the conclusion to which we jumped, of intentional manipulation of the data to hide the unaccounted wastewater discharges, might have an innocent explanation or plausible cover story. For example, the City might have installed a new meter on June 30, 2013 which reported results in a different scale and if so it presumably has records showing such replacement.

However, even if one starts with the proposition that the June error in the data was just an accident, and the City intends to notify the Regional Board of the error in due course, the fact remains that the City is likely discharging partially treated wastewater in the 80-100 million gallon range which is a potential public health issue. With the River Watch lawsuit being quietly settled and the Regional Board not conducting an inquiry, and my client being effectively

muzzled, it appears that this issue will be addressed only if the EPA steps in and gets to the bottom of this issue.

It would seem to not be an insignificant issue. For example, my family along with many other farmers and ranchers surrounding the City exclusively relies upon the aquifer for domestic water, although City residents are served by water impounded in the surrounding hills and not the groundwater in the Little Lake Valley. In investigating the City's permitting process we learned that the City obtained a variance from the ratio of 1:10 to 1:10 to the surface waters based upon the City's representations that the treated wastewater discharged from the Enhanced Wetlands would have reduced nitrogen. The treatment process in the Enhanced Wetlands is ultra violet which achieves the predicted result. We learned for June- October 2013 that the City's predicted improvement of nitrogen reduction was not achieved and that the City's self-monitoring reports show the nitrogen levels more than double that allowed by the permit. Maybe this is not a big deal and maybe the limits have no connection with public health. However, the discharge to the groundwater is occurring before the discharge point to the surface waters and the Enhanced Wetlands is part of the "treatment train" where ultra violet supposedly breaks down the nitrogen. I do not know whether the wastewater at the bottom of the Enhanced Wetlands has had the benefit of the ultra violet treatment, which apparently is inadequate in any event, and it is likely that the ultra violet has less impact for the bottom waters being discharged into the groundwater. I personally am alarmed that the sewer plant design may be nothing more than a wastewater discharge to groundwater system which is depositing nitrogen in the groundwater.

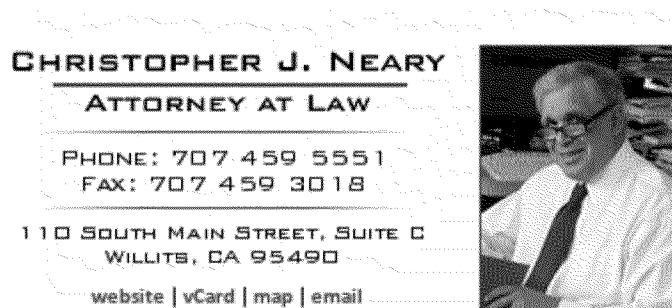
And nobody is doing anything about it. The City essentially bought off River Watch entering into a settlement which avoids any investigation of the groundwater impact of the plant; the Regional Board is sticking its head in the sand; and my client and myself are effectively muzzled both by the District Court which has locked us out of the ECF system and by an imminent settlement with the City which will have a requirement that we not institute any suit including an attempted renewal of intervention in the River Watch lawsuit.

If the EPA is interested in looking into it I have approximately 140,000 pages of documents including about 35,000 pages of the Plant design and the records relating to the regulatory process. I will make the records available. I also understand that the plant operator, who probably has the initial responsibility for the "error" in June 2013 is very critical of the plant designers and the plant as it resulted. He seems to be an honest enough fellow and he sometimes reaches conclusions which are over his pay grade, but he is reported to me to very critical of the plant and its operation, and I understand his complaint to among other things to center upon the Enhanced Wetlands and his observation that he needed storage not treatment ponds.

I will be out of the office on Monday but in all day on Tuesday in case you have any questions. If you want to reach me on Monday, please call my cell phone 707-841-7379

Kind regards,

**C. J. Neary**



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